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June 25, 1997

EX PARTE

William F. Caton
Federal Communications Commission
1919 M Street NW, Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CS Docket Nos. 95-184

Dear Mr. Caton:

OpTel, Inc. ("OpTel") hereby submits the attached *ex parte* letter, which was first filed February 7, 1997, regarding the above-referenced proceeding.

Copies of the attached letter have been sent to the persons listed below to address questions raised by them regarding the performance criteria that are included within private cable service agreements with multiple dwelling units ("MDUs"). Attachment C provides examples of the performance criteria that appear in the contracts of OpTel and MTS, two of the nation's leading private cable operators. Because MDU owners and managers demand such performance standards, other private cable operators use similar terms in their agreements.

Questions also have been raised regarding the use of revenue sharing arrangements between private cable operators and the MDUs they serve. The best evidence that these privately negotiated agreements inure to the benefit of subscribers is that subscriber penetration rates climb significantly when a private cable operator begins providing service to an MDU that previously was served

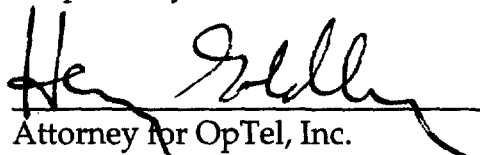
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William F. Caton
June 25, 1997
Page 2

by a franchised cable operator. The attached letter provides further information regarding subscriber satisfaction and private cable penetration rates.

Respectfully,


Attorney for OpTel, Inc.

cc: William Kennard
Michael Riordan
Gretchen Rubin
Rebecca Dorch
Thomas Spavins

First, as a technical matter, Time Warner has vastly understated the difficulties of using "neutral lockboxes." For instance, in an MDU with 300 units, each service provider would be required to install 20 to 30 of their own lockboxes, each serving 10 to 12 units, plus there would need to be an additional 20-30 neutral lockboxes. The space required for this set-up would be substantial in all cases and prohibitive in existing MDUs, particularly if additional providers come on-site.

There are also competitive issues raised by the neutral lockbox approach. Apparently, any new provider would be required to rely on the franchised cable operator, its competitor, to ensure that extensions are technically correct and for certain customer service functions, *e.g.*, switching a customer over to the competitor's service. As a practical matter, new entrants will not invest in a system that depends for its success on the goodwill of its competitor.

B. The Need for Exclusivity

Given the economics of the MDU marketplace, the ability of competing service providers and MDU owners to negotiate for exclusive right of entry agreements is essential to the development of competition in this market.⁴ Service providers need exclusivity to recover their investment in plant and equipment that is needed to serve a MDU and MDU owners need it to tailor the best package of video and telecommunications services for MDU residents. As discussed above, competitive providers must recover the costs of their system installations MDU-by-MDU. Franchised cable operators, on the other hand, can amortize their costs over their entire franchise areas and support pricing discounts with implicit subsidies from the non-competitive portions of their service areas.

Current exclusive agreements, which are the product of fierce competition between and among the franchised cable operators and one or more private cable or alternative video programming distributors, are vastly different from the perpetual exclusive agreements that were forced upon MDU owners prior to the introduction of significant competition.⁵ First, there's a very sophisticated market for MVPD services among MDU owners and condominium owner associations.

⁴ Both OpTel and MTS, for instance, report that they have decided not to compete in several cities that otherwise offer attractive MDU markets, but which are located in mandatory access states.

⁵ OpTel has determined that it has been excluded from serving some 41,000 MDU units in OpTel's primary markets alone because of perpetual agreements.

→ Unlike residents in single family homes who have virtually no bargaining power *vis-a-vis* a cable franchisee, MDU owners bargaining for an entire MDU can negotiate for the highest quality services at the best prices. As a result, today's exclusive agreements typically are for a fixed term of years and include performance standards regarding quality of service, price, channel selection, special services, response times, etc. MDU owners can terminate the contract if the service provider does not stay competitive with other providers in the market on price and service factors. By way of example I have included in Attachment C copies of the performance clauses that appear in the right-of-entry agreements of OpTel and MTS, respectively.

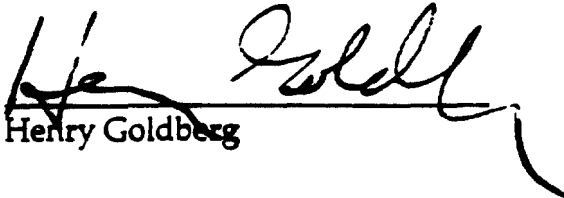
Second, it has been claimed, by Time Warner and others, that in fact all that MDU owners do is choose the MVPD provider that will pay the greatest amount of money to the owner regardless of the quality or type of service involved; in effect, charging a premium for exclusivity and then pocketing that premium. This is simply not the case. Many MDUs around the country are condominiums and cooperatives, where the residents either are the owners or the building is managed on behalf of the co-op owners. For the rest, landlords do not lightly ignore the interests of the residents in having high-quality video and telecommunications services in order to line their own pockets. Landlords, in this respect, are acting principally out of self interest, since the residential real estate market is extremely competitive. Landlords are in the business of renting units first and foremost, and no incidental revenue from video services is going to make it economically rational for a landlord to allow a service provider onto the property if the services provided do not meet tenant expectations or are inferior to those of neighboring properties.

→ Third, the proof as to whether bad service is being forced upon the tenants is whether subscriber penetration rates go up or down when an MDU owner switches from an MSO to a private cable competitor. The subscriber penetration rates experienced by OpTel and MTS demonstrate that tenants are pleased with the new services offered by the competitor. OpTel has found that subscriber penetration rates climb 10% or more after it begins serving an MDU that has previously been served by a franchised cable operator. Similarly, MTS, which specializes in serving newly constructed properties and thus has no means of "before and after" on-site comparison between an MSO and MTS, has penetration rates that compare extremely favorably city-wide with those of franchised cable operators. Whereas

penetration rates for franchised cable operators in MTS' markets are in the 50% range, MTS has close to an 80% penetration rate in the MDUs that it serves. Attachment D details market-by-market MTS' penetration rates.

I hope that this information is helpful to you in your consideration of these important issues. I would, of course, be happy to discuss any of the foregoing with you at your convenience.

Respectfully,



Henry Goldberg

cc: William F. Caton
Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Joseph Farrell
Julius Genachowski
James Coltharp
Suzanne Toller
Anita Wallgren
Marsha MacBride
Meredith Jones
John Nakahata

ATTACHMENT C

Contract Terms

EXHIBIT ____

ADDITIONAL SERVICE AGREEMENT TERMS

The provisions contained in this exhibit shall control to the extent of any conflict with any provision of the body of this agreement.

1. **COMPETITIVE RATES.** OpTel agrees that its rates for the Services, in the aggregate, shall be competitive with the average rates for comparable services generally charged by other full service providers of cable television services to "Comparable Projects" (excluding lower rates offered for special promotions of limited duration and rates of any provider operating without a meaningful net margin in order to gain subscribers). As used herein, "Comparable Projects" shall mean those multi-unit residential projects in the market area of the Property comparable in quality and size to the Property.
2. **COMPETITIVE PROGRAMMING.** OpTel agrees that the quality and quantity of its programming line-up for the Services, in the aggregate, shall be competitive with the programming line-up offered by other full service providers of cable television services to "Comparable Projects" (excluding channels offered for special promotions of limited duration). As used herein, "Comparable Projects" shall mean those multi-unit residential projects in the market area of the Property comparable in quality and size to the Property. The foregoing shall not require that OpTel provide any particular channel provided that it otherwise satisfies the requirements of this section.
3. **COMPETITIVE TECHNOLOGY.** OpTel agrees to maintain and upgrade the System as necessary to keep the System in good and operating condition and substantially current with widely prevalent technologies being utilized by other full service providers of cable television services to "Comparable Projects"; provided, however, the foregoing shall not hold OpTel to a standard based on providers who are providing technologies that are unique, proprietary or experimental or which OpTel reasonably believes could not be provided to the Property on a commercially reasonable basis. As used herein, "Comparable Projects" shall mean those multi-unit residential projects in the market area of the Property comparable in quality and size to the Property.
4. **REPAIR RESPONSE AND COMPLETION.** OpTel shall respond within a reasonable time to any request for a repair of the System (a "Service Request"). Any Service Request for an outage which similarly affects less than eight Units served by the System shall be considered a "Minor Problem". OpTel shall respond to a Service Request for a Minor Problem not later than twenty-four hours (excluding weekends and holidays - i.e., from 5:00 p.m. Friday to 8:00 a.m. Monday) after its receipt of a Service Request from Owner or a Subscriber, and shall thereafter pursue the completion of such repair with all reasonable diligence. Any Service Request for an outage which similarly affects eight or more Units served by the System shall be considered a "Major Problem". OpTel shall respond to a Service Request for a Major Problem not later than eight hours (excluding weekends and holidays) after its receipt of a Service Request from Owner or a Subscriber, and shall complete such repair not later than forty-eight hours (excluding weekends and holidays), unless the Major Problem is such that it cannot reasonably be repaired within such time, in which event OpTel shall proceed with diligence to complete such repair as soon as reasonably possible. Any Minor or Major Problem not fully cured within the above applicable designated time frame will be considered a "Material Failure" under this agreement, unless such delay is due to any event of force majeure (as described in the body of this agreement); provided, however, that even if such delay is due to an event of force majeure, OpTel shall continue with diligence to cure the problem. Notwithstanding the preceding sentence, with respect to any failures by OpTel to cure a Minor or Major Problem within the applicable time frame that occur within any ten day period, all such failures shall be considered as only one "Material Failure" for the purposes of this section. In order to be considered a "Material Failure", Owner shall be required to provide written notice to OpTel of each problem and failure to cure within ten days of the occurrence of such alleged failure. If OpTel commits a "Material Failure" more than (i) six times in a three month period for a Minor Problem or (ii) three times in a three month period for a Major Problem, no further cure periods provided for herein shall apply and Owner shall have the option to terminate this agreement upon sixty days written notice to OpTel; provided that such notice must be given not more than ten days following the notice of the Material Failure that gives Owner the right to so terminate. The repair response and completion requirements of this section are subject to delays caused by events of force majeure (as described in the body of this agreement).
5. **OWNER'S RIGHT TO AUDIT.** Upon providing OpTel with fifteen days prior written notice of Owner's desire to do so, Owner, at its expense, may audit the records of OpTel relating to revenues generated from Subscribers at the Property during the immediately preceding two year period. Such audit shall be conducted during OpTel's business hours at the office where such records are normally kept. If Owner's audit discloses an underpayment of Owner's Revenue Share, OpTel shall, subject to its right to contest Owner's audit, forward such underpayment to Owner. If such underpayment exceeds five percent of the actual amount of Owner's Revenue Share for the last year, then, subject to OpTel's right to contest Owner's audit, OpTel shall reimburse Owner for all reasonable third-party costs of Owner's audit. If OpTel elects to contest Owner's audit, OpTel and Owner shall mutually agree on an independent auditor to reaudit the Total Gross Receipts from Subscribers at the Property for the applicable period. The determination of such independent auditor shall be binding. If such independent auditor determines that OpTel underpaid Owner's revenue share by more than five percent of Owner's Revenue Share for the last year, then OpTel shall pay the cost of the second audit; otherwise, Owner shall pay the cost of the second audit.
6. **ADDITIONAL INSURANCE REQUIREMENTS.** [OpTel shall cause Owner to be named as an additional insured in the commercial general liability insurance policy required to be maintained by OpTel pursuant to subsection 10.a of the body of this agreement. Further, upon request, OpTel shall provide Owner with a certificate evidencing that such insurance coverage is in full force and effect.] [Notwithstanding Section 10.a(i) of the body of this agreement, OpTel shall maintain commercial general liability insurance on an occurrence basis with limits of liability of not less than \$2,000,000.] [All insurance to be maintained by OpTel pursuant to Section 10.a of the body of this agreement shall be issued by insurance companies having a rating of A-VIII or better according to the current issue of Best's Insurance Reports.]
7. **CONFIDENTIALITY.** Neither party, nor any of its partners, officers, employees, agents or consultants, shall disclose any of the financial or service terms of this agreement to any person or entity without the prior written consent of the other party; provided,

however, that such terms may be disclosed to either party's attorneys or accountants (so long as such parties agree to keep the terms of this agreement confidential), to the extent required by law, to the extent necessary to enforce the terms of this agreement and by Owner to its lender as necessary to obtain the Lender's Consent. Provided that Owner instructs all such parties that the information contained in this agreement is confidential, Owner may disclose any of the terms and provisions of this agreement to any prospective purchaser of the Property or prospective lender of Owner or subsequent owner of the Property without being in violation of the foregoing provision. Further, neither party shall be in violation of the foregoing provision as it pertains to said party's employees or agents to the extent that such party undertakes reasonable good faith efforts to preclude its employees or agents from making such unauthorized disclosures. Provided that OpTel instructs all such parties that the information contained in this agreement is confidential, OpTel may disclose any of the terms and provisions of this agreement to any prospective purchaser of OpTel or any of its assets or any prospective lender of OpTel or to any entity now or hereafter affiliated with OpTel without being in violation of the foregoing provision.

8. **RENEWAL; COMMENCEMENT DATE** OpTel or an entity affiliated with OpTel is currently providing Services to the Property pursuant to that _____ Agreement dated _____ 19____ originally between _____ as the owner of the Property, and _____ as operator (the "Existing Agreement"). This agreement is in renewal, but not extinguishment, of the Existing Agreement; provided, however, all terms and conditions governing the subject matter hereof shall be governed by the terms and conditions contained in this agreement. This agreement constitutes the entire agreement between the parties with respect to the Services. Notwithstanding Section 2 of the body of this agreement, the "Activation Date" and the date that the Term of this agreement commences shall be the date this agreement is fully executed by Owner and OpTel.
9. **SYSTEM COMPATIBILITY.** All parts of the System installed by OpTel will be compatible with any local services that are required to operate with the System.
10. **NEW CONSTRUCTION** Owner, with respect to the construction of the improvements on the Property, and OpTel, with respect to the installation of the System, each agree reasonably to cooperate with the other in an effort to speed construction and reduce costs. In particular, Owner agrees to coordinate with OpTel so that OpTel can make use of the common utility trenching in connection with OpTel's installation of the System. OpTel shall install the number of cable television outlets in each Unit as required by Owner's construction plans; however, if Owner desires more than 3 outlets in any Unit, Owner shall be responsible for the cost of the installation of such additional outlets.
11. **PAYMENT OF OWNER'S REVENUE SHARE** Notwithstanding Section 3 of the body of this agreement, Owner's Revenue Share shall be paid in arrears to Owner's address for notices within forty-five days after the end of each quarter.
12. **OPTEL'S WAIVER OF INSPECTION** Section 4.2.(iii) of the body of this agreement, "OpTel's Inspection", is hereby deleted from the agreement. OpTel has reviewed the physical condition of the Property and has determined that it is technically feasible for OpTel to deliver the Services to the Property.
13. **ACTIVATION DATE** Notwithstanding Section 2 of the body of this agreement, the "Activation Date" shall be the earlier to occur of (a) the actual date that the System begins transmission of the Services (which date shall be evidenced by the date reflected on the first billing of Subscribers), and (b) _____ days after the Effective Date. [OpTel shall send Owner written notice of the Activation Date.]
14. **OPTEL'S RIGHT TO ASSIGN** Notwithstanding Section 11 of the body of this agreement, Owner shall have the right to withhold its consent to any proposed assignment of this agreement by OpTel (other than an assignment to any agent, subsidiary or affiliated corporation or entity, or any corporation resulting from the consolidation or merger of OpTel into or with any other entity, or to any person, firm, corporation or other entity acquiring a majority of the issued and outstanding capital stock of OpTel or a substantial part of OpTel's assets) if Owner reasonably and in good faith determines that the proposed assignee cannot perform the obligations of OpTel under this agreement. In no event shall Owner be entitled to receive any consideration or remuneration in connection with any assignment of this agreement by OpTel, regardless of whether Owner's consent may be required in connection with any such assignment.
15. **ELECTRICAL SUBMETER** Notwithstanding Section 4.2.(ii) of the body of this agreement, Owner shall have the right to submeter the electricity used by the System, and, if the cost of the electricity used by the System exceeds \$20 per month, OpTel shall pay the actual electrical charges for the electricity used by the System and shall reimburse Owner for the cost and installation of the electrical submeter.
16. **RETRANSMISSION** If OpTel installs any retransmission antenna on the Property to retransmit signals to another property (but excluding any property owned by Owner or an affiliate of Owner or any entity controlled by Owner or any affiliate of Owner), then OpTel shall pay to Owner _____ Dollars (\$_____) per month for each retransmission antenna so installed.

MTSLP SERVICES AGREEMENT

This agreement ("Agreement") is entered into by and between MultiTechnology Services, L. P., a Texas limited partnership ("MTSLP") and [REDACTED] a Texas limited partnership ("Client"), with respect to services to be provided to the property known as [REDACTED], located [REDACTED] the "Property"), consisting of 232 dwelling units ("Units") and any additional Units which may be constructed on the Property in the future, and as more completely described in Exhibit "I"; and

Whereas, MTSLP is in the business of providing various technology based telecommunication and information services to high density residential properties; and

Whereas, Client desires to make MTSLP's services available to the Property and its residents in accordance with the terms and conditions of this Agreement;

Now, therefore, in consideration of the mutual covenants, representations and warranties herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. MTSLP'S SERVICES

- 1.1 **Services:** Client acknowledges that MTSLP will be required to incur significant expense and effort to provide equipment, wiring and cable to the Property to perform its obligations hereunder. Consequently, Client acknowledges and agrees that MTSLP shall have the exclusive right, except as otherwise herein provided, to offer the following telecommunication and information services ("Services") during the Term (hereinafter defined) of this Agreement to the residents of the Property and prospective residents (collectively, "Residents"): local and long distance telephone services ("Telephone Services"), private cable television services ("Cable Services"), energy management services ("EMS"), electronic mail, voice mail, and similar personal communications service ("PCS") and modem sharing services ("pooling"). As of the date hereof, MTSLP has agreed to immediately offer the following Services to the Residents:

§ Telephone Services, as more particularly described on Exhibit "II";

§ Cable Services, as more particularly described on Exhibit "III".

The right of MTSLP to provide Telephone Services shall be subject only to the right of Residents to obtain Telephone Services from the local exchange carrier (hereinafter, the "Local Provider") rather than MTSLP where such option is mandated by law.

As EMS, PCS and pooling services begin to be offered to the Residents by MTSLP, each of such respective Services shall be particularly described on a similar exhibit to be mutually agreed upon and made a part hereof by attaching such exhibit to this Agreement.

MTSLP shall also have the exclusive right, from time to time, to offer additional telecommunication and information services ("New Services") to the Residents by written notification to Client of its election to offer the New Services. From the date the New Services are offered to Residents, the term "Services" herein shall be deemed to include such New Services. The New Services may include, without limitation, any video, data and voice communication mediums which use the equipment, wiring and/or cabling of MTSLP, or direct broadcast satellite ("DBS") which may be utilized in lieu of certain of such equipment, wiring or cabling. At the time such New Services are offered to Residents, each of such New Services shall be particularly described on a similar exhibit to be agreed upon and made a part hereof by attaching such exhibit to this Agreement.

1.2 Design and Installation:

- a) Subject to Sections 2.3 and 2.4 below, MTSLP will design, construct, install and maintain such equipment, wiring and cabling as it deems necessary for the provision of the Services and according to reasonably prudent construction practices (hereinafter, the "System"). MTSLP will use its best efforts to work with Client regarding scheduling the use of the Property and to make as few deviations from existing wiring and cabling (if any) as possible, unless circumstances reasonably require such deviations. MTSLP will restore or repair as near to original condition as reasonably possible any physical damage resulting to the real property and improvements on the Property from the work of MTSLP in connection with such installation. MTSLP will provide a written schedule of construction to Client and will provide periodic updates to Client as the situation requires it. In addition, MTSLP will provide as-built drawings of the wire and cable installation.
- b) MTSLP will install Cable and Telephone outlets pursuant to the following requirements:

<u>Unit Type</u>	<u># Cable Outlets</u>	<u># Telephone Outlets</u>
One Bedroom:	3	4
Two Bedrooms:	4	5
Three Bedrooms:	5	6

Cost to Client for each additional outlet: Cable: \$23.00; Telephone: \$26.00.

1.3 Rates: MTSLP shall determine the rates to be charged Subscribers (hereinafter defined) for the Services taking into account competitive market conditions, its cost of providing each of the Services and such other factors as it shall deem appropriate in its sole discretion.

- a) The rates charged by MTSLP for local Telephone Services will be less than those charged by the Local Provider for similar features and services. MTSLP shall not be required to compete with rates not generally available or those available only in conjunction with promotions of a duration of six (6) months or less;
- b) The rates charged by MTSLP for long distance Telephone Services will be less than those normally available rates charged by MCI, Sprint and AT&T for similar residential services. MTSLP shall not be required to compete with rates not generally available or those available only in conjunction with promotions of a duration of six (6) months or less;
- c) The rates charged by MTSLP for Cable Television Services will be less than those charged by the local franchise cable television company for similar programming and services. MTSLP shall not be required to compete with rates not generally available or those available only in conjunction with promotions of a duration of six (6) months or less.
- d) MTSLP shall have the right, at its sole discretion, and subject to the parameters contained in this section to increase its fees and charges for Services provided under this Agreement. Client shall be notified in writing thirty (30) days prior to the effective date of any increases.

1.4 Maintenance and Repair: The technicians used by MTSLP shall be qualified to perform installation, service and repair work on the System. MTSLP shall use reasonable efforts to provide service response equal to or better in quality and response time than the Local Provider, if any. (See appropriate exhibit for additional service/maintenance terms and conditions.)

1.5 Revenues: Subject to applicable provisions of the exhibits, MTSLP shall be entitled to the total revenues collected or arising from the delivery of Services to Residents. Client shall not be responsible to MTSLP for

EXHIBIT "II"

TELEPHONE SERVICES

The MTSLP Services Agreement ("Agreement") shall be subject to the additional terms and conditions provided in this Telephone Services Exhibit. Unless otherwise provided herein, defined terms shall have the same meaning as in the Agreement.

MTSLP's Responsibilities

1. General

1.1 MTSLP shall have the exclusive right to offer Telephone Services to Residents, subject only to the right of Residents, if any, to obtain Telephone Services from the Local Provider rather than MTSLP.

1.2 MTSLP will maintain and repair the System to keep it in a first-class operating condition. The response objective for failures which materially affect the operation of the System or provision of the Service ("Major Failures") as determined by MTSLP shall be 4 hours. The response objective for all other failures ("Minor Failures") is 24 hours, provided that this work will be performed during business days and if an on-site response is required the response shall be within 48 hours. Such time period will commence upon notification to MTSLP by a Subscriber or Client. MTSLP will respond to any and all service failures within a period of time that is equal to, or better than the local provider. Client agrees to cause its Property management to notify MTSLP as soon as possible if it becomes aware of a problem with Telephone Services to a Unit or the Property in general.

2. Installation

2.1 MTSLP will design and engineer the telephone functions and components of the System to be compatible with the Local Provider.

2.2 MTSLP will install an NEC America NEAX2400 IMG or comparable private telephone system in the Central Room provided on the Property.

2.3 MTSLP will coordinate the installation of all Telephone Services to the Property with the Local Provider.

2.4 MTSLP will contract and supervise the installation of the wiring to be installed throughout the Property to provide for the System.

2.5 MTSLP will contract and supervise the installation of the internal wiring in each Unit on the Property, and the wiring connecting that Unit with the underground cable termination points at the end of each building.

2.6 MTSLP will contract and supervise the installation of all connectors, boxes, jacks, ground and surge protection materials required for the System.

2.7 MTSLP will coordinate with Client any changes to the original wiring design utilizing a written change form ("Change Order") which must be approved and signed by both Client and MTSLP. Approval of any such Change Order shall not be unreasonably withheld or delayed.

2.8 MTSLP will provide an E-911 dialing line for the pool area and health center at no charge. The initial weatherproof telephone instrument for the pool location will be at MTSLP's expense, health center phone will be provided by Client.

2.9 MTSLP will provide telephone line for interbuilding connectivity and will coordinate the activation of the water meter reading system with Client's provider.

2.10 MTSLP will provide one telephone jack in the master bedroom closet of each unit for Client's intrusion alarm system monitoring.

3. Operation

3.1 MTSLP will operate the System on the Property. All changes in Telephone Services will be performed by MTSLP. All normal repair service for the System will be the responsibility of MTSLP and will be performed at no extra cost to the Subscribers or Client except in cases of negligence, misuse or willful damage or destruction. New service, changes in service and special features service will be billed to the ordering party at established rates.

3.2 MTSLP will provide brochures and marketing materials relative to the Telephone Services on the Property.

3.3 MTSLP will bill its Telephone Services monthly. Such billing will delineate the local dial tone charge, the enhanced feature charges and the long distance charges incurred during the billing period. All billing and collection questions will be handled between the Subscriber and MTSLP.

3.4 MTSLP agrees to be responsible for the costs, if any, charged by the Local Provider for bringing all necessary telephone trunk lines from its facilities to the Property's point of demarcation in order to provide Telephone Services to the Property.

3.5 From and after MTSLP's activation of the PBX switch, MTSLP will provide, at no cost to Client, normal and customary local dial tone and up to six (6) telephone instruments to the management/leasing office on the Property. Long Distance charges will be at the lowest rate available from MTSLP. In addition, a property-wide voice messaging service will be available to the leasing staff to send messages to Subscribers of PrivatePhone®.

3.6 MTSLP will provide local dial tone telephone service for any resident employee who subscribes to PrivatePhone®.

4. Client Responsibilities:

4.1 Client agrees to provide MTSLP the right to utilize all wiring inside the buildings and elsewhere on the Property, if any, in order to fulfill its obligations under this Agreement, provided that MTSLP shall not inhibit the use of the Property and wiring owned by Client other than as provided for in this Agreement.

5. Installation

5.1 Client will provide access to the Property for installation of inside wiring in each Unit and each building, and for the laying of cable throughout the Property in a prescribed routing mutually agreed to between MTSLP and Client.

5.2 Client will provide scheduling coordination of MTSLP and other contractors during construction so as to minimize damage to MTSLP cabling laid on the Property, and will ensure restoration of any installed cable should it be damaged by other contractors.

5.3 Client will work with MTSLP on the location of wiring termination points (phone jacks) inside each Unit, at the end of each building, to minimize the aesthetic value of the installation, and to minimize the cost of the installation as well.

5.4 Client will coordinate with MTSLP any changes to the original wiring design utilizing a written change form ("Change Order") which must be approved and signed by both Client and MTSLP. Client's approval of any such Change Order shall not be unreasonably withheld or delayed.

5.5 Client will, prior to MTSLP's activation of the PBX switch, provide a separately metered, dedicated, permanent, power source to the Control Room.

6. Operation

6.1 Client's Property management will provide each Resident with the initial sign-up form and options relative to the Telephone Services and will offer the Telephone Services as a Property amenity and value for Residents.

6.2 Property management will forward to MTSLP the required documents or follow the procedures necessary to establish Service for a new Resident on the Property, but will not be required to do additional Telephone Services marketing or sales.

7. Price and Payment

7.1 Except as otherwise provided in Sections 2.3 and 2.4 of the Agreement, MTSLP shall bear all costs associated with the installation of the System and provision of the Telephone Services to the Property.

7.2 MTSLP shall pay Client, within thirty (30) days of the end of each quarter, a royalty based upon the gross collected revenue (gross revenue less any bad debts) times the percentage factor appropriate for the level of Subscriber penetration achieved as per the following schedule:

<u># of Units</u>	<u>% of Collected Gross Revenues</u>
0-60	5.0%
51-80	6.0%
61-70	7.0%
71-80	8.0%
81-90	9.0%

91-98
99-100

10.0%
12.0%

"Penetration" means the number of Units within the Property to which MTSLP provides Telephone Services divided by the total number of Occupied Units within the Property. "Collected Revenues" means the actual amount of Service Revenues billed to Subscribers within the property less an allowance for uncollectible accounts. "Allowance for uncollected accounts" means the actual Bad Debt experience of MTSLP as a percent of total service revenue for the previous calendar year.

Client

(Initials)

MTSLP

EXHIBIT "III"

CABLE SERVICES

This Cable Services Exhibit, as referenced in the MTSLP Services Agreement ("Agreement"), shall be made a part of and subject to the terms and conditions of the Agreement and the additional terms and conditions provided in this Exhibit. Unless otherwise provided herein, defined terms shall have the same meaning as in the Agreement.

MTSLP RESPONSIBILITIES

1. General

1.1 MTSLP shall have the exclusive right to offer Cable Services to Residents.

1.2 MTSLP shall offer a minimum of forty one (41) basic and premium cable channels initially, and will at all times offer programming options that are equal to, or better than the local provider. The programming options provided to the property will be increased from time to time so as not to place the property at a marketing disadvantage compared to other like properties within a five mile radius of the property.

1.3 MTSLP shall use its best efforts to provide Cable Services, including maintenance and repair, equal to or better in quality (with the exception of HDTV applications) than the services provided by the Local Provider, and to meet or exceed all mandatory standards of the National Cable Television Association or other standard setting organizations for the private cable television industry, as in effect on the date hereof.

1.4 MTSLP will maintain and repair the System to keep it in a first-class operating condition. The response objective for failures which materially affect the operation of the Services ("Major Failures"), as determined by MTSLP, shall be 4 hours. The response objective for minor failures is 24 hours, provided that this work will be performed during business days and if an on-site response is required the response objective shall be 48 hours. Such time period will commence upon notification to MTSLP by a Subscriber or Client. MTSLP will respond to any and all service failures within a period of time that is equal to, or better than the local provider. Client agrees to cause its Property management to notify MTSLP as soon as possible if it becomes aware of a problem with Cable Services to a Unit or the Property in general.

2. Installation

2.1 MTSLP will install the cable television components of the System in the Central Room provided on the Property.

2.2 MTSLP will contract and supervise the installation of the wiring, infrastructure work (if any) to be installed throughout the Property to provide for the System on the Property.

2.3 MTSLP will contract and supervise the installation of the internal wiring in each Unit on the Property, and the wiring connecting that Unit with the underground cable termination points at the end of each building.

2.4 MTSLP will design and engineer the cable television components and functions of the System in full compliance with mandatory industry standards and Federal Communications Commission (FCC) requirements.

2.5 MTSLP will provide all required connectors, boxes, jacks, ground and surge protection materials required for the System.

2.6 MTSLP will provide an in-house Property Channel and the equipment necessary for operating such Property Channel. This does not include an on site personal computer for Client to access the Property Channel.

2.7 MTSLP will furnish at its expense a security channel which will broadcast live video of the main security gate. MTSLP will provide the initial camera for video imaging.

3. Operations

3.1 MTSLP will operate the System on the Property. All changes in Cable Services will be the responsibility of MTSLP. Normal repair service will be performed at no additional cost to Subscribers or Client except in cases of negligence, misuse or willful damage or destruction. New Service, changes in service and special features will be billed to the ordering party at established rates.

3.2 MTSLP will provide all brochures and marketing materials for the Cable Services on the Property.

3.3 MTSLP will bill for its Cable Services monthly. Such billing will delineate charges for basic and premium Cable Services. All billing questions will be handled between MTSLP and the Subscriber.

3.4 MTSLP will provide free expanded basic Cable Services to the clubhouse and to any resident employee.

CLIENT RESPONSIBILITIES

4. Installation

4.1 Client will provide access to the Property for installation of inside wiring in each Unit and each building, and for the laying of cable throughout the Property in a prescribed routing mutually agreed to between MTSLP and Client.

4.2 Client will provide scheduling coordination of MTSLP and other contractors during construction so as to minimize damage to MTSLP cabling laid on the Property, and will insure restoration of any installed cable should it be damaged by other contractors.

4.3 Client will work with MTSLP on the location of wiring termination points (CATV jacks) inside each Unit, at the end of each building, to maximize the aesthetic value of the installation, and to maximize the cost efficiency of the installation, as well.

5. Operations

5.1 Client's property management will provide each Resident with the initial sign-up form and options relative to Cable Services, and will promote the Cable Services as a Property amenity and value for Residents.

5.2 Property management will forward to MTSLP the required documents, or follow the procedures necessary, to establish a subscription for Cable Services for a new Resident on the Property, but will not be required to do additional Cable Services marketing or sales.

6. Price and Payment

6.1 Except as otherwise provided in Sections 2.3 and 2.4 of the Agreement, MTSLP shall bear all costs associated with the installation of the System and provision of the Cable Services on the Property.

6.2 MTSLP shall pay Client, within thirty (30) days of the end of each quarter, a royalty based upon the gross collected revenue (gross revenue less any bad debts) times the percentage factor appropriate for the level of Subscriber penetration achieved as per the following schedule:

<u># of Units</u>	<u>% of Collected Gross Revenue</u>
0-50	5.0%
51-60	6.0%
61-70	7.0%
71-80	8.0%
81-90	9.0%
91-95	10.0%
96-100	12.0%

"Penetration" means the number of Units within the Property to which MTSLP provides Cable Services divided by the total number of Occupied Units within the Property. "Collected Revenues" means the actual amount of Service Revenues billed to Subscribers within the property less an allowance for uncollectible accounts. "Allowance for uncollected accounts" means the actual Bad Debt experience of MTSLP as a percent of total service revenue for the previous calendar year.

Client

(Initials)

MTSLP

ATTACHMENT D

MTS Penetration Rates

MultiTechnology Services
Penetration Report - By Market
As of December 31, 1998

CABLE

<u>Property Name</u>	<u>No. of Accts.</u>	<u>Avail. Units</u>	<u>Occ. Units</u>	<u>% Occ.</u>	<u>Subs</u>	<u>% Pen</u>
Summary By Market						
Dallas Market						
New Construction - Mature	19,076	19,076	17,189	90.1%	12,276	71.4%
New Construction - Ramp up	1,971	1,712	1,261	73.7%	1,142	90.6%
Retro - Mature	4,435	4,435	4,206	94.8%	3,063	72.8%
Retro - Ramp up	-	-	-	0.0%	-	0.0%
Total Dallas Market	25,482	25,223	22,656	89.8%	16,483	72.8%
Austin Market						
New Construction - Mature	2,568	2,568	2,257	87.2%	2,171	96.2%
New Construction - Ramp up	1,128	924	323	35.0%	270	83.6%
Retro - Mature	-	-	-	0.0%	-	0.0%
Retro - Ramp up	-	-	-	0.0%	-	0.0%
Total Austin Market	3,714	3,512	2,580	73.5%	2,441	94.6%
San Antonio Market						
New Construction - Mature	3,582	3,582	3,201	89.4%	2,956	92.3%
New Construction - Ramp up	-	-	-	0.0%	-	0.0%
Retro - Mature	-	-	-	0.0%	-	0.0%
Retro - Ramp up	-	-	-	0.0%	-	0.0%
Total San Antonio Market	3,582	3,582	3,201	89.4%	2,956	92.3%
Houston Market						
New Construction - Mature	1,200	1,200	880	74.2%	704	79.1%
New Construction - Ramp up	436	436	383	87.8%	302	78.9%
Retro - Mature	383	383	332	86.7%	286	86.1%
Retro - Ramp up	-	-	-	0.0%	-	0.0%
Total Houston Market	2,019	2,019	1,605	79.5%	1,292	80.5%
Phoenix Market						
New Construction - Mature	320	320	298	93.4%	231	77.3%
New Construction - Ramp up	482	76	36	50.0%	19	50.0%
Retro - Mature	-	-	-	0.0%	-	0.0%
Retro - Ramp up	500	440	292	66.4%	204	69.9%
Total Phoenix Market	1,312	836	626	75.2%	454	72.2%
Atlanta Market						
New Construction - Mature	-	-	-	0.0%	-	0.0%
New Construction - Ramp up	630	630	355	56.3%	355	100.0%
Retro - Mature	-	-	-	0.0%	-	0.0%
Retro - Ramp up	-	-	-	0.0%	-	0.0%
Total Atlanta Market	630	630	355	56.3%	355	100.0%
Albuquerque Market						
New Construction - Mature	-	-	-	0.0%	-	0.0%
New Construction - Ramp up	602	602	310	51.5%	251	81.0%
Retro - Mature	-	-	-	0.0%	-	0.0%
Retro - Ramp up	-	-	-	0.0%	-	0.0%
Total Albuquerque Market	602	602	310	51.5%	251	81.0%
Denver Market						

**MultiTechnology Services
Penetration Report - By Market**

As of December 31, 1998

CABLE

<u>Property Name</u>	<u>No. of Accts.</u>	<u>Avail. Units</u>	<u>Occ. Units</u>	<u>% Occ.</u>	<u>Subs</u>	<u>% Pen</u>
New Construction - Mature	-	-	-	0.0%	-	0.0%
New Construction - Ramp up	316	30	14	46.7%	3	21.4%
Retro - Mature	-	-	-	0.0%	-	0.0%
Retro - Ramp up	-	-	-	0.0%	-	0.0%
Total Denver Market	316	30	14	46.7%	3	21.4%
Las Vegas Market						
New Construction - Mature	-	-	-	0.0%	-	0.0%
New Construction - Ramp up	-	-	-	0.0%	-	0.0%
Retro - Mature	-	-	-	0.0%	-	0.0%
Retro - Ramp up	-	-	-	0.0%	-	0.0%
Total Las Vegas Market	-	-	-	0.0%	-	0.0%
Company Total						
New Construction - Mature	26,766	26,766	23,636	88.1%	18,340	76.9%
New Construction - Ramp up	5,573	4,410	2,684	60.9%	2,342	87.3%
Retro - Mature	4,816	4,816	4,536	94.2%	3,348	73.8%
Retro - Ramp up	500	440	292	66.4%	204	68.9%
Total	37,655	36,434	31,150	86.0%	24,236	77.3%